



Nebraska Resources

Newsletter

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Agency Numbers to Remember

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Roger K. Patterson Resigns as Director



Roger K. Patterson, director of the Nebraska Department of Natural Resources since January 1999 retired August 19, 2005.

"Roger has guided our state through some of the toughest years of drought in recent memory, and he has managed to confront difficult water issues with an acute sense that all of us are friends, neighbors and Nebraskans," Governor Heineman said. "His service will be missed."

During Roger's six plus years as director he saw over the merger of two state agencies, the Nebraska Department of Water Resources and the Nebraska Natural Resources Commission into the Department of Natural Resources. He helped negotiate settlements to the U.S. Supreme Court cases with Wyoming on the North Platte River and with Kansas and Colorado on the Republican River. Roger helped form the Water Policy Task Force and worked closely with them and has worked with other Missouri River states on the Missouri River Master Manual. Roger has also represented the state on numerous compacts, boards and commissions dealing with Nebraska water issues.

Before leaving his post Roger said, *"It has been a pleasure and a privilege for me to have served Nebraskans for the last six and a half years. Working with two good Governors and water users across the state during these difficult times of drought and change has been especially rewarding."*

The staff of NDNR and the state will miss Rogers' leadership and wish him well in his endeavors.

Decision Time Near for Platte River ESA Program

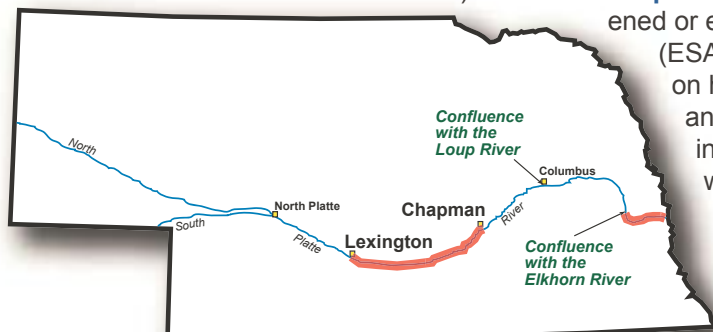
By Jim Cook

The Platte River **"Cooperative Agreement"** was signed by the Secretary of Interior and the governors of Nebraska, Wyoming, and Colorado on July 1, 1997.

That agreement outlined a comprehensive basinwide **program for improving habitat for three bird species** (whooping cranes, piping plovers and interior least terns) and **one fish species** (pallid sturgeon), all of which are listed as threat-



ened or endangered under the federal Endangered Species Act (ESA). For the three bird species, the program would focus on habitat in the central Platte area between Lexington and Chapman. For the pallid sturgeon, the habitat area involved is below the confluence of the lower Platte River with the Elkhorn River. In striving to improve habitat for those four species, the program would address adverse impacts of and provide ESA coverage for existing and new water related activities upstream of Columbus, Nebraska.



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Platte ESA Program Continued from page 1

In the last several years, the U.S. Fish and Wildlife Service (FWS) formulated recommendations for how to improve habitat for the four species. Those recommendations include enhancing flows in the central Platte River to bring those flows closer to FWS “target flows” and developing some lands along the river so that they have more favorable habitat characteristics for the species. Because there was and still is substantial disagreement about the flow and other habitat needs of the species, the 1997 agreement provides for implementing the program on an incremental basis, i.e. by addressing the FWS recommendations a bit at a time and then evaluating whether more really needs to be done. For the first 13 year increment, the 1997 agreement provides for an **average annual reduction of the current shortages to the FWS target flows by 130,000 to 150,000 acre-feet**. Each of the three states must also prevent water related activities begun or expanded after July 1, 1997 from causing additional shortages to those target flows. **Also proposed is the development and protection of at least 10,000 acres of suitable habitat for the species in the reach between Lexington and Chapman.** If the first program increment is implemented, decisions about whether to continue on will need to be made at the end of those first 13 years.



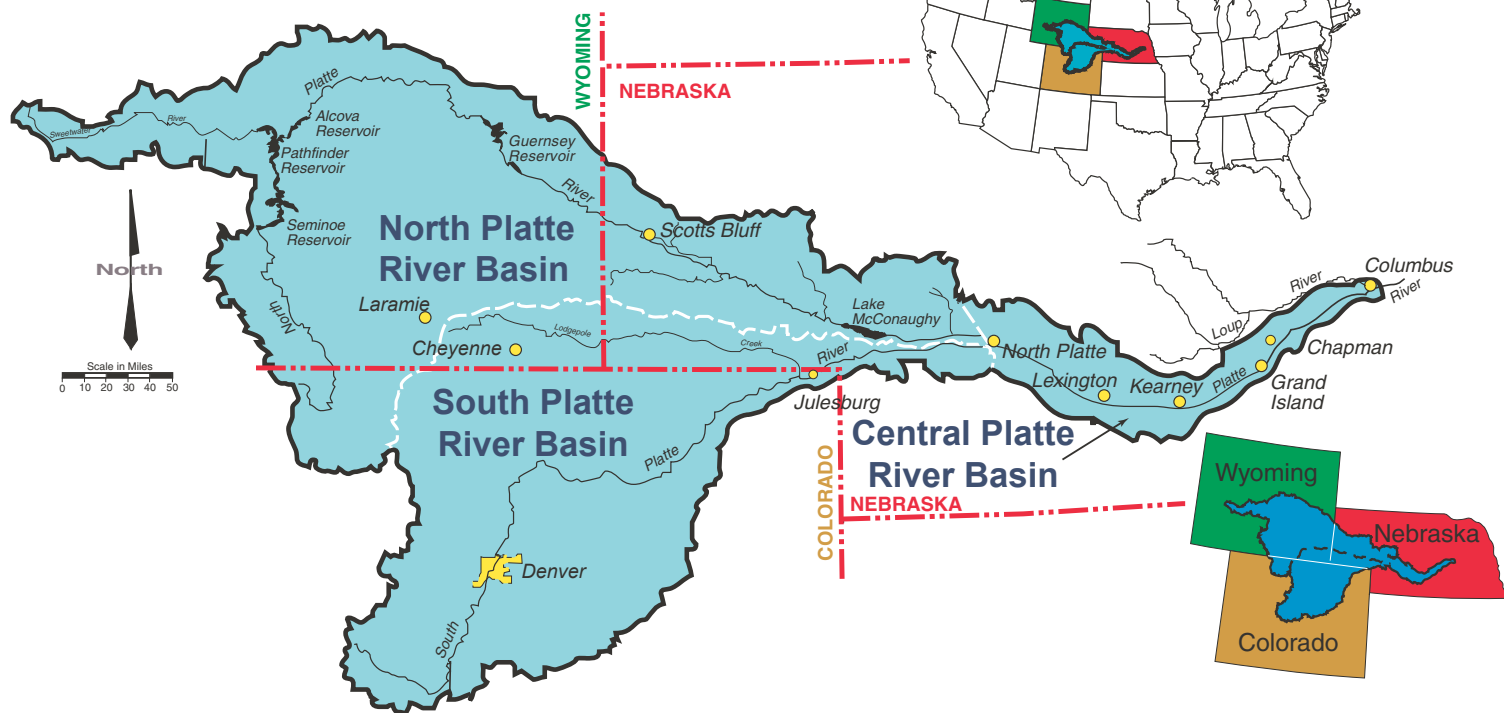
A low Platte River in central Nebraska during summer season

Since the July 1, 1997 signing date for the Cooperative Agreement, the three states and the Department of Interior have been working with environmental organizations and water user stakeholders to reach agreement on the details for accomplishing the first increment goals. The negotiation process has taken far longer than was anticipated as has the preparation and revision of the Environmental Impact Statement required by the National Environmental Policy Act. Originally, decisions on whether to move forward with a basinwide program were expected to be made in 2001. While additional delays are still possible, negotiations have now proceeded to the point where those decisions are probable in 2006.

Before the “Platte River Recovery Implementation Program” can be implemented, a number of additional activities must be completed. First, negotiation on the remaining elements of the program must be finished. Included among those outstanding issues at the time this article was being prepared were final decisions on each of the three state new depletion plans and how the costs of the program are to be funded. For Nebraska, implementation of the new depletion plan will need to be coordinated with preparation and implementation of a number of integrated management plans that are being prepared pursuant to LB962, the state’s new water legislation adopted in 2004. The area designated as an **“overappropriated basin”**

Platte River Program Area

Continued on page 3



under LB 962 partially overlaps with the area subject to the new depletion plan. Other areas designated as **“fully-appropriated”** under that legislation also coincide with land areas subject to the new depletions plan.

The Final Environmental Impact Statement is currently being prepared by federal agencies in the Department of Interior. That FEIS, which will respond to all public comments that were received on the draft Environmental Impact Statement released in January of 2003, is scheduled for release in January or February of 2006. It will be followed a month or two later by a final biological opinion prepared by the Fish and Wildlife Service and shortly thereafter by a “Record of Decision” (ROD) by the Secretary of Interior. Then, each of the three states will evaluate whether the proposed program is in the best interests of that state. In Nebraska, that evaluation will include input from public meetings that likely will be held in the winter and spring of 2006 and recommendations from the Governor’s Platte River Advisory Council. That Council has 23 members who represent different interests in the basin. Those members have followed the negotiation process and continue to evaluate the pros and cons of the state entering into such a program. The most compelling reason for the state to do so is that all water uses that were in place prior to July 1, 1997 and that affect the flows of the Platte River upstream of the confluence of the Platte River with the Loup River would receive Endangered Species Act coverage for any adverse effects on the four ESA species. Water-related activities begun after that date would also be covered if they are subject to and are in compliance with the Nebraska new depletion plan for those activities. On the minus side are the potential costs to the state for implementing the new depletion plan. Refined estimates of the costs of offsetting the

impact of new uses begun since July 1, 1997 will need to be developed before the final decision is made in Nebraska.

Before the proposed program can move forward Congress will also have to adopt authorizing legislation for the federal funding needed. Introduction of such legislation is anticipated in 2006. As noted earlier, funding also remains an issue subject to final negotiation. The projected out-of-pocket costs of the proposed program have risen substantially from what was anticipated in 1997. The cash requirement for the first 13 year increment of the program is now estimated at \$187,000,000. One principle of the program is that costs are to be shared 50% by the federal government and 50% collectively by the three states. However, the majority of the state shares may not be in the form of cash, but rather in the form of direct land and water contributions to the program. For Nebraska, the primary water contribution will come through the Environmental Account in Lake McConaughy, the lake near Ogallala owned and operated by the Central Nebraska Public Power & Irrigation District. The Environmental Account in that lake is used to store water that is released later to enhance flows for the species. The primary land contribution in the first increment will be Cottonwood Ranch, a 2,350 acre parcel on the river near Overton. That parcel is owned and is being contributed to the program by the Nebraska Public Power District. Under the proposals now being considered, but not yet approved, Nebraska’s only cash contributions to the program would be those necessary to offset the state’s share of implementing the Nebraska new depletion plan, i.e. the costs of offsetting the impact of new water uses begun since July 1, 1997.

If you have questions about the proposed Platte River program or about the state’s process for making a final decision regarding that program, contact Jim Cook at the department.

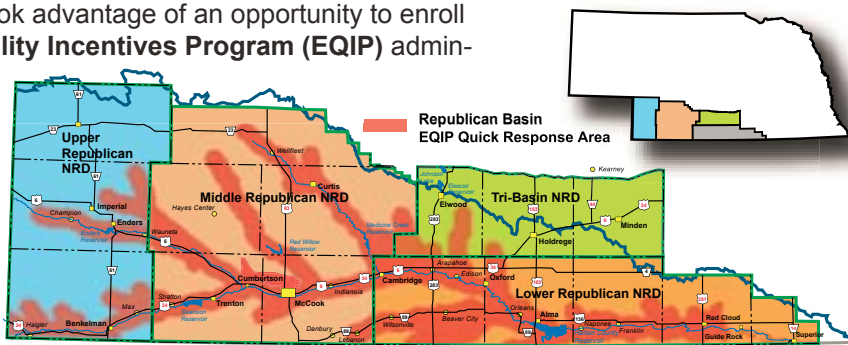
Republican Basin

Environmental Quality Incentives Program Update

By Gayle Starr

Landowners and Operators in the **“quick response area”** of the Republican River Basin (approximately 2.5 miles on each side of the main stem and major tributaries) took advantage of an opportunity to enroll in an innovative practice of the **Environmental Quality Incentives Program (EQIP)** administered by the Natural Resources Conservation Service (NRCS). The practice provided for **federal payments of \$50 per acre for three years and a one-time payment from the Nebraska Department of Natural Resources (NDNR) of \$100** in exchange for the owner/operator **not irrigating for four years**. They could, however, raise crops under dry land conditions. **The goal of the program was to enroll a total of 10,000 acres in 2005.**

A total of approximately **135 owner/operator** units signed up for the program. While some contracts are not yet finalized, it appears as though about 9,500 acres will be enrolled, with about 60% of that acreage in the Lower Republican NRD, about one-half that amount in the Middle Republican NRD and only minimal acreages in the Upper Republican and Tri-Basin NRDs. Over two-thirds of the acreage enrolled had been irrigated from ground water sources and the remaining acres from surface water sources.



DNR Floodplain Management Division & Employees Receive State and National Recognition

By Jessica A. Robison

The **Nebraska Department of Natural Resources** recently received the **Tom Lee Award** for Excellence for "Comprehensive Floodplain Management Program with special strengths in Mitigation, Planning, Mapping and Community Outreach." The award is named after Tom Lee, a floodplain manager responsible for some of the United States best state-level programs, and is given annually by the Association of State Floodplain Managers. The Tom Lee Award recognizes outstanding floodplain management programs or activities on the state level.

On the state level, Nebraska DNR has received recognition from the NE GIS/LIS Association. **Jim Williams, Kim Menke and Josh Lear** won the "**Excellence in GIS Award**" for the development of the Large Area Mapping Initiative (LAMI). The Excellence in GIS Award was created to highlight outstanding examples of Geographic Information Systems excellence. Examples of what nominees must possess include: commitment to GIS and GIS technologies; notable contributions to and impact on local community, state, and region; unique and comprehensive approach to application; and the nominee must set an example for the GIS community.

NE GIS/LIS association also awarded **Ryan Jester** with the **Student GIS Award**. This award is given to individuals who qualify as an "up and coming GISer" who is actively involved with, learning about, and promoting GIS

technologies. Ryan won the award for the creation and implementation of 93 countywide ArcReader maps.

Nebraska DNR was recognized on the National level once again when **Brian Dunnigan, head of DNR's Floodplain and Dam Safety, was chosen as one of ten state officials to represent all fifty states at a National Map Modernization Conference** held on August 3 and 4. Definition of a flood risk, section 7 MHIP quality standard, levees, and LOMC delegation to states were the four main topics discussed at the conference.

Jim Williams was chosen to testify on behalf of the Association of State Floodplain Managers before the Subcommittee on Housing and Community Opportunity House Committee on Financial Services in Washington D.C. in July. His testimony was on the topic of "Implementation of FEMA's Flood Map Modernization Program." Jim's testimony dealt with the changing vision of the Map Modernization program, and how a different focus can lead to a considerably different outcome. The current vision has led the priority of Map Modernization toward "accessible" and "reliable" flood maps rather than flood maps focused on quality. Jim stressed that "*quality is the cornerstone to the success of Flood Map Modernization,*" and in order to achieve the desired quality, more time and money is needed for the project.

Platte-Republican Conservation Reserve Enhancement Program

By Jeremy Gehle

The Platte-Republican Conservation Reserve Enhancement Program (CREP) targets **100,000 acres** along an approximately two-mile wide stretch on either side of the Republican River and along the Platte River from the Colorado and Wyoming borders to Central Nebraska. **The primary goal of the Platte-Republican CREP is to reduce ground and surface water use on irrigated cropland to help alleviate stress on water resources.** In addition to reducing water consumption, the Platte-Republican CREP will also accrue the benefits of improved water quality and the enhancement of wildlife habitat.

There is a **50,000 acre limit in each the Platte and Republican basin** respectively. The acreage limit in the Platte basin is broken down further to a 40,000 acre limit below Lake McConaughy, and above Lake McConaughy there is a 5,000 acre limit to land served by groundwater only and a 5,000 acre limit to land served by groundwater and/or surface water.

Since the April 4th initial sign-up, the Nebraska Department of Natural Resources (DNR) has **received applications for 49,400 acres**. The Platte basin has submitted applications for a total of 12,800 acres with 3,090 acres having been applied for below Lake McConaughy. Above Lake McConaughy, DNR has received applications for 1,730 acres of groundwater only and 7,980 acres of groundwater and/or surface water which is already above the 5,000 acre limit. The Republican basin has submitted applications for 36,600 acres.

DNR is responsible for approving the Water Use Contract to retire the use of water on the land enrolled in CREP for a period of ten to fifteen years. The Water Use Contract is a binding legal document between the applicant and the State to secure the beneficial use of the water historically applied to the land for the contract period. When the contract expires, use of the water enrolled in CREP is returned to the applicant. When a CREP application is associated with a tract of land that has a natural flow appropriation that is not associated with a storage use appropriation, the applicant must obtain a temporary surface water transfer before the Water Use Contract can be approved.

DNR continues to be excited with the outstanding level of participation of the CREP program and anticipates another wave of sign-up this fall.

For additional information on the program visit your FSA County Office, the Nebraska Department of Natural Resources website at www.dnr.state.ne.us or the Nebraska Farm Service Agency website at www.fsa.usda.gov/ne/.





Legislative Bill 335 and the DNR Dam Safety Program

By Patrick Diederich, P.E.

A peer review of the Department's Dam Safety Program was conducted by the Association of State Dam Safety Officials (ASDSO) in 2002. The peer review found that overall the department had a good program, but one of the deficiencies identified was a lack of clear statutory authority to implement the program. The peer review specifically recommended that the Department consolidate program authorization and legal requirements, provide for civil enforcement authority, update and simplify fee schedules, provide authority to establish dam safety rules and regulations, and incorporate other aspects of FEMA's Model Dam Safety Law.

LB619, the Safety of Dams & Reservoirs Act, was introduced by Senator Schrock on January 19, 2005 and signed by Governor Heineman on April 7, 2005 as part of LB335. **LB335 went into effect on September 3, 2005.**

Some of the highlights of LB335:

- Makes it clear that dams that are regulated under a federal dam safety program may continue to be regulated primarily by the federal program provided that the federal program has objectives, standards, and requirements that meet or exceed the purposes of the Act, and the owner has entered into a cooperative agreement with the Department.
- Adds a requirement that plans, specifications, and construction supervision be the responsibility of a licensed professional engineer.
- Provides that a city, village, or county may institute overlay zoning precluding construction of structures downstream of a state permitted dam that is classified as having other than a high hazard potential, if a breach inundation study performed by an engineer, in accordance with generally accepted engineering practice, determines that construction of such structures would require that such dam be reclassified as having a high hazard potential. The owners of such dam shall provide such engineering study as a condition to requesting overlay zoning.
- Allows department employees to enter onto private property, as necessary, to perform their official duties.
- Modifies the criteria for dams over which the department has jurisdiction: The department has jurisdiction over any dam in a high hazard location and such dams shall not be exempt from department regulations under any circumstance. The department also regulates any dam 25 feet or more in height or any dam 50 acre-feet or more in storage capacity. The following minimum height and storage capacity exemptions exist, except for dams in high hazard areas; 1) any dam that is less than six feet tall regardless of storage capacity is exempt; and 2) any dam with a storage capacity less than 15 acre-feet regardless of height is exempt. Also, canal control structures and highway and railroad embankments are exempt unless they are intended to be dams.
- Removes requirements for repair, operation, and maintenance from the law because these types of work are not, and have not been regulated by the Department in the past.
- Changes the fee structure from the current one dollar per foot in height of dam to a flat fee to be established by rule and regulation of not to exceed two hundred dollars for dams less than twenty-five feet in height, three hundred dollars for dams twenty-five feet in height to not more than fifty feet in height, and four hundred dollars for dams in excess of fifty feet in height.
- Adds a civil penalty provision that provides that any person who violates the Act or an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department under the Act may be assessed a civil penalty in an amount not to exceed five hundred dollars per day.
- Adds "no fault" language with respect to the state, department, its employees and agents.
- Adds a provision for the appointment of a consulting board to report on safety matters when requested by the owner.
- Expands on the authority of the department to investigate or require the owner to investigate, gather data, study, etc. as necessary for safety.
- Restates and expands on department authority to adopt rules and regulations.
- Expands on and strengthens the construction completion certification requirement for new or reconstructed dams.
- Adds requirement for the department to issue an approval to operate prior to the dam going into service.
- Expands on the department's action and authority upon receipt of a complaint relative to a dam.
- Expands on the owner's responsibilities and actions during emergencies. Also, provides the department authority to take control of a dam during an emergency.
- States requirements for dams completed prior to the enactment of LB 335.
- Expands on requirements for emergency action plans.

Special thanks go out to all who worked toward the completion of this goal. LB335 is available on the Departments web site (<http://www.dnr.state.ne.us/docs/damsafety.html>) for anyone interested in more detail.

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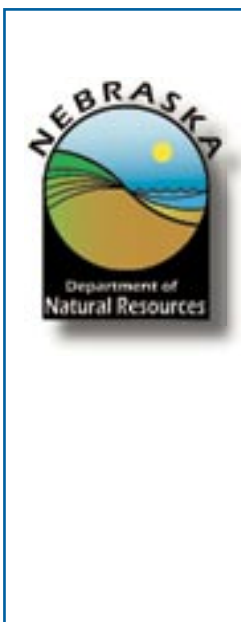
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Department of Natural Resources
Ann Bleed, Acting Director

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Environmental Trust Funds NDNR CREP Grant Application

The Nebraska Environmental Trust has approved funding for a NDNR application for assistance in augmenting the Nebraska's USDA Conservation Reserve Enhancement Program (CREP). At their April 7, 2005 meeting, the Board approved a \$30,000 grant that may be spent over a period of up to just over two years. It will be used to help cover state level administrative expenses related to the \$158 million program to conserve water, improve water quality, and enhance wildlife habitat in parts of southern and western Nebraska. The program is one of three NDNR administered efforts funded through the Trust. The other two ongoing programs include funding for meter cost share in the Republican Basin and assistance with Water Policy Task Force expenses.

Nebraska Department of Natural Resources....

....dedicated to the sustainable use and proper management of the State's natural resources.